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David Eugene Huddleston

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2563

7590 12/23/2009  
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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* DAVID HUDDLESTON

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Application No. 10/765,501  
Technology Center 3700

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Mailed: December 23, 2009

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Before TOI JOHNSON *Review Paralegal*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 14, 2009. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on January 23, 2008, wherein the Examiner was instructed that corrections were required. A review of the file finds that a communication was mailed which included the Summary of Claims Subject Matter and Claims Appendix section. However, the communication did not include the Applicant’s signature. The matters still requiring attention prior to docketing are identified below.

APPEAL BRIEF

Summary of Claimed Subject Matter

Appellant filed an Appeal Brief dated May 9, 2008. The Appeal Brief is not in compliance with 37 CFR § 41.37© effective September 13, 2004.

According to 37 CFR § 41.37© (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters.< While reference to page and line number of the specification \*\*>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37©(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and

the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-5 of the Appeal Brief is deficient because it does not map the independent claims to the specification by page and line number. Correction is required.

### Claims Appendix

A review of the Claims Appendix is not consistent as amended in the last amendment filed December 1, 2005, as claims 1-5, 7, 9, 11-17 and 19 were pending. However, claims 2, 9, 12, and 19 have been canceled as per the communication filed by Applicant on February 25, 2008. It is not clear whether the canceled claims have been approved by the Examiner.

Clarification from the Examiner is required.

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed May 9, 2008 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

3) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief;

4) appropriately respond to the canceled claims and noted above; and

5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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